

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**IOWA SELECT FARMS, LLP**  
As Proposed Operator of the  
Confinement Feeding Operations  
Listed on Exhibit "A" to this  
Order

**ADMINISTRATIVE CONSENT ORDER  
NO. 2008-AFO-16**

TO: Iowa Select Farms, LLP  
c/o Mike Blaser  
Suite 2000, Ruan Building  
Des Moines, IA 50309

**I. SUMMARY**

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Iowa Select Farms, LLP (ISF) for the purpose of resolving issues related to the proposed acquisition by ISF of certain confinement feeding operations listed on Exhibit "A" hereto and presently owned and operated by WhiteStone Farms, LLP (WhiteStone) in Clarke, Ringgold, Taylor and Union Counties of Iowa (the WhiteStone AFOs) and the timing of submittal and approval of original manure management plans (each, a MMP and collectively the MMPs) for the WhiteStone AFOs after the acquisition closes. If the acquisition of the WhiteStone AFOs by ISF does not close by January 24, 2008, this Order shall be null, void and of no force or effect.

**II. JURISDICTION**

This Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted pursuant thereto.

**III. STATEMENT OF FACTS**

1. ISF has represented to the DNR that it has entered into a purchase agreement to acquire the WhiteStone AFOs from WhiteStone, which agreement contemplates a closing in mid- to late- January, 2008. Under the purchase agreement, after closing ISF will notify DNR under 567 Iowa Administrative Code (IAC) 65.21 that ISF has assumed legal responsibility for the WhiteStone AFOs. ISF further represents that, to the best of its knowledge, if ISF does not acquire the WhiteStone AFOs, it is uncertain if WhiteStone will continue to operate the WhiteStone AFOs or if the WhiteStone AFOs would be sold, auctioned or otherwise disposed of.

REC'D 1/23/08 10:03

2. ISF has further represented to the DNR that certain of the WhiteStone AFOs do not have sufficient available manure storage to allow manure applications to be delayed until spring 2008, which will necessitate manure applications from such WhiteStone AFOs shortly after ISF assumes legal responsibility for the WhiteStone AFOs.

3. ISF has further represented to the DNR that many of fields included in MMPs for the WhiteStone AFOs do not appear to have adequate soil testing completed to allow a determination of the appropriate phosphorus index as required by, among other provisions, Iowa Code section 459.312 and 567 IAC 65.17(1), 65.17(16) and 65.17(17), and that it will take some time, as field conditions and staffing constraints allow in the spring and early summer of 2008, for appropriate soil testing to be completed to facilitate phosphorus index calculations required in MMPs.

4. ISF has further represented to the DNR that many of the fields included in MMPs for the WhiteStone AFOs do not have sufficient acres under good and valid written manure easements or licenses and, further, that many of the easements and licenses included in MMPs for the WhiteStone AFOs terminate by the express terms of the easement or license upon a transfer of the WhiteStone AFO to which the easement or license relates. As a result, it will take time, as staffing constraints allow, in the spring and early summer of 2008 for ISF personnel to secure new easements or licenses that meet the requirements of Iowa Code section 459.312 and 567 IAC 65.17(8)"b", and obtaining such new easements or licenses is a prerequisite to allow ISF to submit MMPs for the WhiteStone AFOs that meet statutory and rule requirements.

5. WhiteStone has previously been cited by the DNR for manure management violations at some or all of the WhiteStone AFOs, including for failure to retain manure between periods of land application as required by Iowa Code section 459.311 and 567 IAC 65.2(3) and for violations of freeboard levels required by 567 IAC 65.2(3).

6. The DNR has informed ISF that it is the DNR's position that Iowa Code section 459.312 requires a party acquiring an existing confinement feeding operation to submit to the DNR, within an unspecified time period following the acquisition, a new "original" MMP for the confinement feeding operation. This is in contrast to ISF's position that a party acquiring an existing confinement feeding operation can assume the previous owner's MMP with respect to the operation and to thereafter provide the DNR with annual updates of the MMP as required by Iowa Code section 459.312.

7. An "original" MMP submitted to DNR must meet all MMP requirements to be approved by the DNR, including immediate compliance with the phosphorus index requirements of Iowa Code section 459.312 and 567 IAC 65.17(1), 65.17(16) and 65.17(17). In addition, pursuant to Iowa Code sections 459.400 and 459.503, a person submitting an "original" MMP must pay additional fees to the DNR, including a filing fee of \$250.00 per MMP and an indemnity fund fee of at least \$.10 per animal unit at the confinement feeding operation for which the MMP is submitted.

8. ISF has informed the DNR that ISF disagrees with the DNR's interpretation of Iowa Code section 459.312, and while ISF reserves all rights to contest such interpretation in the future, ISF has agreed to adhere to such interpretation solely for purposes of this Order.

9. Pursuant to Iowa Code Section 459.312 and 567 IAC 65.16(5), a person shall not remove manure from a manure storage structure which is part of a confinement feeding operation for which a MMP is required without an approved MMP. The current MMPs for the WhiteStone AFOs have been approved by the DNR, and WhiteStone could therefore remove manure from the WhiteStone AFOs under these MMPs. In contrast, before ISF could remove manure from the WhiteStone AFOs, ISF would be required to submit and have approved new "original" MMPs after appropriate soil testing is completed and after new and additional manure application agreements for land to be included in the MMPs are obtained.

10. ISF has further represented to the DNR that if ISF is required to comply with the DNR's interpretation of Iowa Code section 459.312 and if ISF is not provided with a reasonable amount of time to develop new "original" MMPs for the WhiteStone AFOs, ISF is unlikely to close on the acquisition of the WhiteStone AFOs. Specifically, ISF is unwilling to assume the near certain risk of being cited and penalized for violations of Iowa Code section 459.312 and DNR rules related to the failure to apply manure under an approved new "original" MMP. Otherwise, ISF would elect to apply manure without an approved plan to avoid significant environmental consequences associated with failure to retain manure between periods of land application as required by Iowa Code section 459.311 and 567 IAC 65.2(3) and for violations of freeboard levels required by 567 IAC 65.2(3).

11. Until an original MMP referenced in Section V.1 is approved by DNR for a specific Whitestone AFO, ISF has represented that prior to any manure application for said WhiteStone AFO it will obtain written approval via FAX from the appropriate DNR field office staff with jurisdiction over such WhiteStone AFO and will use its best efforts to carry out manure applications on fields meeting all applicable MMP requirements, including soil testing and P-index calculations. The DNR has represented that it will use its best efforts to respond to each request by ISF for approval of a manure application by FAX within five (5) business days of receipt of the ISF request for approval by the appropriate field office.

12. ISF has further represented to the DNR that ISF will use its best efforts to complete and submit to DNR new "original" MMPs for the WhiteStone AFOs as soon as is reasonably practicable after the acquisition is completed, which MMP submissions to occur on a site-by-site basis. In furtherance thereof, ISF agrees to have all MMP submissions for the WhiteStone AFOs to DNR by not later than September 15, 2008.

13. ISF has further represented to the DNR that it will report the currently available freeboard in each manure storage structure of each Whitestone AFO to the appropriate DNR field office once during each calendar week from the time that ISF acquires such WhiteStone AFO to the time a MMP referenced in Section V.1 is approved for such WhiteStone AFO.

#### IV. CONCLUSIONS OF LAW AND FINDINGS

1. Iowa Code section 459.103 provides that the Environmental Protection Commission shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. Iowa Code section 459.311 and 567 IAC 65.2(3) requires that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into water of the state or into a tile line that discharges to waters of the state.

3. Iowa Code section 455B.186 and 567 IAC 62.1(1) state that a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state, except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the Director.

4. Iowa Code subsection 459.312(1) requires the owner of a confinement feeding operation constructed after May 31, 1985, other than a small animal feeding operation, to submit an original MMP and an updated MMP. Iowa Code subsection 459.312(5) prohibits removal of manure from a manure storage structure which is part of a confinement feeding operation for which an MMP is required unless the DNR approves an MMP.

5. The facts set forth above establish a risk to the environment if WhiteStone is not able to sell the WhiteStone AFOs in a timely manner. The facts set forth above also establish likely violations of Iowa law and DNR rules by any party acquiring the WhiteStone AFOs without substantial time for such party to, among other things, perform soil tests and obtain additional manure application agreements for land to which manure can be applied from the WhiteStone AFOs.

6. The facts set forth above indicate that there will likely be violations of Iowa environmental law and rules arising shortly after the acquisition of the WhiteStone AFOs by any party at this time. On the one hand, a party acquiring the WhiteStone AFOs and applying manure that will need to be applied to avoid manure releases and freeboard violations without an approved new "original" MMP will be in violation of Iowa Code section 459.312 and 567 IAC 65.16(5). On the other hand, a party acquiring the WhiteStone AFOs and not applying manure due to the lack of an approved MMP will be faced with freeboard violations and manure releases while the MMPs are being developed, submitted to and reviewed by the DNR, and eventually approved by the DNR.

#### V. ORDER

THEREFORE, the DNR orders and ISF agrees to the following:

1. ISF shall submit an original MMP meeting the requirements of 567 IAC 65.17 for each WhiteStone AFO to the DNR by not later than September 15, 2008.

2. Until a MMP referenced in Section V.1 is approved by the DNR for a specific Whitestone AFO, ISF shall obtain written approval via FAX from the appropriate DNR field office staff with jurisdiction over such WhiteStone AFO prior to any manure application with respect such WhiteStone AFO, and ISF will use its best efforts to carry out manure applications on fields meeting all applicable MMP requirements, including soil testing and P-index calculations.

3. ISF shall report the currently available freeboard in each manure storage structure of each Whitestone AFO to appropriate DNR field office once during each calendar week from the time that ISF acquires such WhiteStone AFO to the time a MMP referenced in V.1 is approved for such WhiteStone AFO.

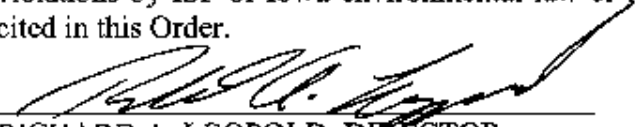
4. If the acquisition of the WhiteStone AFOs by ISF does not close by January 24, 2008, this Order shall be null, void and of no force or effect.

## **VI. WAIVER OF APPEAL RIGHTS**

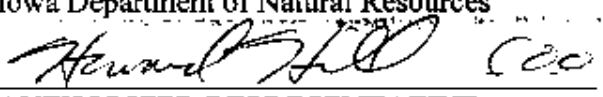
This Order is entered into knowingly and with the consent of ISF. For that reason ISF waives its rights to appeal this Order or any part thereof. The waiver by ISF does not apply to the rights of ISF to appeal any further action that may be taken by the DNR against ISF as a result of any alleged non-compliance by ISF with this Order.

## **VII. NONCOMPLIANCE; AGREEMENT TO FOREGO ENFORCEMENT**

Failure to comply with this Order may result in additional enforcement action by the DNR, including the assessment of penalties. DNR agrees to forego any additional enforcement action, including a penalty assessment, for MMP violations during the time period from when ISF acquires the WhiteStone AFOs to when ISF receives approval for each MMP referenced in Section V of this Order if ISF complies with the requirements of this Order. The DNR specifically reserves the right to pursue enforcement action, including penalties, for any future violations by ISF of Iowa environmental law or rules at the WhiteStone AFOs not specifically cited in this Order.

  
RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 18th day of  
January, 2008.

  
AUTHORIZED REPRESENTATIVE  
Iowa Select Farms, LLP  
By: Iowa Select Farms, Inc., General Partner

Dated this 17th day of  
January, 2008.

Exhibit "A"  
Listing of WhiteStone AFOs

	<u>Farm Name</u>	<u>DNR ID#</u>	<u>Location</u>
1.	Thayer Sow Farm	62086	23-71-28, Union County
2.	Site 12 Finishing Farm	62084	12-67-30, Ringgold County
3.	Site 13 Finishing Farm	59356	10 and 11-69-33, Taylor County
4.	Site 14 Finishing Farm	59358	22-69-33, Taylor County
5.	Site 15 Finishing Farm	59359	23-69-34, Taylor County
6.	Site 16 Finishing Farm	62336	21-69-33, Taylor County
7.	Site 17 Finishing Farm	59360	12-69-33, Taylor County
8.	Site 18 Finishing Farm	59357	4-70-34, Taylor County
9.	Davis Finishing Farm	62313	5-73-27, Clarke County